

HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)
(Chapter VIII Rule 32 (2) (b))

Description of the Case.

CRIMINAL MISC. APPLICATION No. 204/03

Susheel Kumar Gupta

petitioner

Versus

State

.....

respondents

Approved for reporting.

Not approved for reporting.

Date of Decision 16th of December, 2005.

Initial of Judge.

**IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL**

Criminal Misc. Application No. 204/03

Susheel Kumar Gupta
S/o Late Shri Shivnarain
R/o Ramghat Sabji Mandi
Haridwar
Police Station Haridwar,
District Haridwar

petitioner

Versus

- 1 State of Uttaranchal
- 2 Prashant Mittal s/o Laxman Swaroop Mittal
- 3 Smt. Saroj w/o Laxman Swaroop Mittal
All residents of Laxman colony, Kurushetra
Police Station Thaneshwar, Kuresheta
District Kurshetra, Haryana
- 4 Smt. Annu, w/o Sanjay Kumar
Daughter of Laxman Swaroop Mittal
R/o Main Bazar, Tharonda
District Karnal, Haryana

respondents

Hon'ble B.C. Kandpal, J

This petition under Section 482 Cr.P.C. has been filed by the petitioner Susheel Kumar Gupta who is complainant in criminal case under Section 406/498- A IPC and 3/4 of the Dowry Prohibition Act for quashing order dated 23.8.2003 passed by Sessions Judge, Haridwar in Criminal Revision No. 470 of 2003 Prashant Mittal and others vs State of Uttaranchal and others.

Brief facts giving rise to this petition are that the daughter of the petitioner married with respondent No.2 Prashant. The marriage ceremony was solemnized at Haridwar. As respondent No.2 to 5 were not happy with the dowry, hence they started making demand for more dowry. On account of the harassment the daughter of the

petitioner fell ill and the respondents left her to the house of the petitioner.

However, the petitioner tried to reconcile the matter but the respondents refused. The daughter of the petitioner had ultimately suffered a paralytic attack due to physical and mental harassment by the respondents.

When the petitioner ultimately failed to reconcile the matter, he lodged the First Information Report on 9.3.2000 at Police Station Haridwar under Section 498-A IPC and $\frac{3}{4}$ Dowry Prohibition Act.

The matter was investigated by the police and the police submitted the final report in the case on 29.6.2000.

When the final report was submitted to the court of Chief Judicial Magistrate, Haridwar, the petitioner filed the present petition and his protest petition was registered as a complaint case.

The complainant got himself examined under Section 200 Cr.P.C. and thereafter he also got his witnesses examined under Section 202 Cr.P.C.

The learned Magistrate after taking into consideration the entire evidence on record was pleased to take cognizance and the process was issued against respondents 2 to 5 under Section 498A, 406 IPC and $\frac{3}{4}$ Dowry Prohibition Act vide order dated 4.7.2002.

Respondents 2 to 5 preferred a revision before the court of learned Sessions Judge, Haridwar against the aforesaid order passed by the C J M. The learned Sessions Judge was pleased to allow the revision and thereby quashed the summoning order.

The learned Sessions Judge vide order dated 23.8.2003 accepted the final report submitted by the police before the court of CJM.

The petitioner feeling aggrieved by the order of the revisional court has filed this petition before this court with a prayer that the impugned judgment and order passed by the revisional court be

set aside and the order passed by CJM dated 4.7.2002 in complaint case be restored.

Respondents No.2 to 5 filed the counter affidavit stating therein that the learned CJM committed gross illegality in summoning respondents 2 to 5 without looking into the statement of the victim Preeti, her mother Saloni and her uncle Rajesh Kumar who have denied any kind of demand of dowry or harassment or cruelty upon smt. Preeti. It has also been stated that in view of the aforesaid statement recorded by the Investigation Officer there was no reason for the learned CJM to have summoned the accused persons. It has also been stated that the lower court by treating the protest petition as a complaint case has ignored the provisions of law without accepting or rejecting the final report first.

The petitioner has filed the rejoinder affidavit.

Heard Sh.N.C.Gupta, learned counsel for the petitioner, learned AGA for opposite party No. 1 , Sh. Vivek Shukla learned counsel for opposite party No.2 to 5 and perused the record.

Record reveals that the learned CJM vide order dated 4.7.2002 has discussed the evidence and has taken into consideration the statement of the witnesses recorded under Section 202 Cr.P.C. and only thereafter the court came to the conclusion that there was a prima facie case to proceed against the accused persons.

The perusal of the judgment passed by the revisional court shows that the order dated 4.7.2002 passed by CJM was set aside and at the same time the Sessions Judge vide order dated 23.8.2003 accepted the final report submitted by the police.

The judgment rendered by the revisional court shows that the Learned Sessions Judge has assessed the evidence in the revision.

I am of the opinion that the learned revisional court could not embark on re-appreciation of evidence. The jurisdiction of the revisional court in the revision is restricted and its interference could

have been there only when there was a patent or gross error in the summoning order passed by the learned CJM or there was no compliance of the mandatory provisions of law as well as there was violation of any statutory requirements.

I could not lay my hands that there was any flagrant miscarriage of justice which gave an occasion for interference in the revision by the revisional court.

The learned revisional court on the basis of re-assessment of the evidence has set aside the order passed by the CJM summoning respondents 2 to 5.

I am of the opinion that there is no glaring defect in the procedure or on the point of law leading to miscarriage of justice. The power of the revision is to be exercised only for correcting injustice and not for illegality which may not go to the root of the case.

In the instant case, the revisional court after re-appreciation of the evidence has set aside the findings of facts of the trial court and has substituted its own findings which the revisional court could not. The findings of facts of the trial court could be set aside only when they were based on misreading or non-reading of evidence or misappreciation of evidence amounting perversity and could not be supported by logic.

The order passed by CJM on 4.7.2002 clearly indicates that the learned Magistrate after having perused the complaint and the statement of the witnesses had come to the conclusion that there is a prima facie case to proceed against the accused persons. The learned Magistrate at the time of issuing process was not supposed to consider the evidence on record meticulously.

I do not find any perversity in the order passed by the learned CJM issuing the process against respondents 2 to 5.

I do not find any material to show that the complaint filed by the petitioner before the court below is malafide, frivolous or vexatious, hence there is no reason for quashing the summoning order.

With the aforesaid reasons I come to the conclusion that the judgment and order passed by the revisional court is liable to be quashed. The order dated 4.7.2002 passed by learned CJM summoning respondents 2 to 5 deserves to be restored.

The petition is allowed and the order dated 23.8.2003 passed by learned Sessions Judge, Haridwar is set aside, consequently the order dated 4.7.2002 passed by CJM Haridwar is hereby restored.

(B.C. Kandpal, J)

December 16, 2005

nbj